

SENATE BILL 1613
By Jordan

AN ACT to amend Tennessee Code Annotated, Title 7, Chapter 51, Part 11, relative to regulation of sexually-oriented businesses in the state of Tennessee.

WHEREAS, the Legislature finds that sexually-oriented businesses are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

WHEREAS, the concern over sexually transmitted diseases is a legitimate health concern of the State which demands reasonable regulation of sexually-oriented businesses in order to protect the health and well-being of the citizens; and

WHEREAS, there is convincing documented evidence that sexually-oriented businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values; and

WHEREAS, the state desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime, preserve the quality of life; preserve the property values and character of surrounding neighborhoods and deter the spread of urban blight; and

WHEREAS, the Legislature has determined that locational criteria alone do not adequately protect the health, safety, and general welfare of the people of this state; and

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WHEREAS, it is not the intent of this act to suppress any speech activities protected by the First Amendment, but to enact a content neutral act which addresses the secondary effects of sexually-oriented businesses; and

WHEREAS, it is not the intent of the Legislature to condone or legitimize the distribution of obscene material, and the Legislature recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state law enforcement officials to enforce state obscenity statutes against any such illegal activities in the state; and

WHEREAS, the Legislature can address these situations pursuant to the authority granted by the United States Constitution and the Constitution of the State of Tennessee; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 7, Chapter 51, Part 11, is amended by deleting it in its entirety and substituting instead the following:

7-51-1101. (a) This part shall be known and cited as the "Adult-Oriented Establishment Registration Act of 1997."

(b) (1) It is the purpose of this act to regulate sexually-oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the state, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually-oriented businesses within this state. The provisions of this act have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually-oriented materials. Similarly, it is not the intent nor effect of this act to restrict or deny access by adults to sexually-oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually-oriented entertainment to their intended market. Neither is it the intent nor effect of this act to condone or legitimize the distribution of obscene material.

(2) Based on evidence concerning the adverse secondary effects of adult uses on the community presented in available reports on the subject, and on findings incorporated in the cases of City of Renton v Playtime Theatres, Inc., 475 U.S. 41 (1986), Young v American Mini Theatres, 426 U.S. 50 (1976), Barnes v Glen Theatre, Inc., 111 S. Ct. 2456 (1991), Triplett Grille Inc. v City of Akron, 40 F.3d 129 (6th Cir. 1994), and Northend Cinema Inc. v Seattle, 585 P.2d 1153 (Wash. 1978), and on studies in other communities including, but not limited to, Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Los Angeles, California; Austin, Texas; Seattle Washington; Oklahoma City, Oklahoma; Chattanooga, Tennessee; Memphis, Tennessee; and Beaumont, Texas; and also on findings found in the Report of Attorney General's Working Group On the Regulation Of Sexually-oriented businesses. (June 6, 1989. State of Minnesota), the legislature finds:

(A) Sexually-oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make the owners of these establishments responsible for the activities that occur on the premises.

(B) Certain employees of sexually-oriented businesses defined in this act as adult theatres and cabarets engage in higher incidences of certain types of sexually-oriented behavior at these businesses than employees of other establishments.

(C) Sexual acts, including masturbation, oral and anal sex, occur at sexually-oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows, defined as adult book stores, adult novelty shops, adult video stores, adult motion picture theatres, or adult arcades.

(D) Offering and providing such space, encourages such activities, which create unhealthy conditions.

(E) Persons frequent certain adult theatres, adult arcades, adult cabarets, and other sexually-oriented businesses for the purpose of engaging in sex within the premises of such sexually-oriented businesses.

(F) At least 50 communicable diseases may be spread by activities occurring in sexually-oriented businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections and sigella infections.

(G) As of June 30, 1995, there have been 5,672 reported cases of persons with AIDS and 6,277 persons testing positive for the HIV antibody in the State of Tennessee.

(H) The number of cases of early (less than one year) syphilis in the United States reported annually has risen, with 33,613 cases reported in 1982 and 45,200 through November of 1990.

(I) The number of cases of gonorrhea in the United States reported annually remains at a high level, with over one-half million cases being reported in 1990.

(J) The surgeon general of the United States in his report of October 11, 1986, has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn.

(K) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.

(L) Sanitary conditions in some sexually-oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and operators of the facilities to self-regulate those activities and maintain those facilities.

(M) Numerous studies and reports have determined that semen is found in the areas of sexually-oriented businesses where persons view adult oriented films.

(N) In Memphis/Shelby County, Tennessee, deputies and police officers investigating exotic dance clubs found numerous obscenity violations, physical contact between fully nude dancers and patrons including fondling of dancers and full sexual intercourse, a variety of other sexual contact including fellatio, solicitation offered (sex for hire), undercover narcotics buys, different acts of violence, runaway juveniles and allegations of white slavery. Another officer testified that 90-95% of the dancers use drugs (cocaine, crack, methamphetamine), that clubs do not report crimes because they do not want police involved, and that he saw three girls performing five sex acts in 15 minutes. Further, the Manager of Infectious Diseases at Shelby County Health Department testified that in one topless club, out of 9 females arrested, 8 tested positive for VD and there is a very close relationship between prostitution and these clubs.

(O) Out of 26 females arrested at Bottoms Up, a topless bar in Memphis, 14 had a medical record at the Shelby County STD Clinic.

(P) According to Chattanooga City Police investigation of exotic dance clubs since 1993, there has been a considerable amount of bodily contact between patrons and dancers, dancers sometimes: sit in patron's lap, place their breast against the patron's face; while physical contact is maintained in such a manner as to simulate sexual intercourse; breath heavily into a patron's groin area; bite at, gnaw at, as well as fondle, the genitals of male patrons; pulled patrons into their vaginal areas; allowed patrons to spoon feed themselves with whipped cream that had been spread on the breasts, vaginal, and anal areas of the dancer; and have had patrons place a peeled banana between their legs while female "dancers" have eaten the banana.

(Q) The Federal Court for Eastern District of Tennessee at Chattanooga found that Chattanooga's adult cabarets displayed tactile, body contact, sexual experiences tantamount to prostitution as defined in Tennessee Code Annotated, Section 39-13-512(5).

(R) The findings noted in paragraphs (A) through (Q) raise substantial government concerns.

(S) Sexually-oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial government concerns.

(T) Requiring that entertainers at adult oriented establishments: not appear in a state of full nudity, without interfering in their right to free expression, according to the least restrictive means possible as found in Barnes v Glen Theatre, Inc., and Triplett Grille, Inc., v City of Akron; not dance closer to a patron than six feet; not mingle with the patrons as found in City of New Orleans v Kiefer 164 Southern Reporter 2d 336 (Supreme Court of Louisiana 1964); not solicit any pay or gratuity from any patron as found in KEV v Kitsap County 793 F.2d 1053 (9th Cir. 1986); and not fondle any patron or other entertainer or allow any other entertainer or patron to fondle them will help reduce the incidence of certain types of criminal behavior on the premises of sexually-oriented businesses which leads to the transmission of sexually-oriented diseases.

(U) The general welfare, health, and safety of the citizens of the State of Tennessee will be promoted by the enactment of this act.

7-51-1102. As used in this part, unless the context otherwise requires:

(1) "Adult bookstore" means an establishment having as a substantial or significant portion of its stock and trade in books, films, video cassettes, magazines, computer software or other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas";

(2) "Adult cabaret" means an establishment which features as a principal use of its business, entertainers and/or waiters and/or bartenders who expose to public view of the patrons within such establishment, at any time, the bare female breast below a point immediately above the top of the areola, human genitals, pubic region, or buttocks, even if partially covered by opaque material or completely covered by translucent material; including swim suits, lingerie, or latex covering. Adult cabarets shall include commercial establishments which feature entertainment of an erotic nature including exotic dancers, strippers, male or female impersonators, or similar entertainers.

(3) "Adult entertainment" means any exhibition of any adult-oriented motion picture, live performance, display or dance of any type, which has as a significant or substantial portion of such performance, any actual or simulated performance of specified sexual activities of exhibition and viewing of specified anatomical areas, removal of articles of clothing or appearing unclothed, pantomime, modeling, or any other personal service offered customers;

(4) "Adult mini-motion picture theater" means an enclosed building with a capacity of less than fifty (50) persons regularly used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined below, for observation by patrons therein;

(5) "Adult motion picture theater" means an enclosed building with a capacity of fifty (50) or more persons regularly used for presenting material having as a dominant theme or presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined below, for observation by patrons therein;

(6) "Adult-oriented establishments," includes, but is not limited to, adult bookstores, adult motion picture theaters, adult mini-motion picture establishments, adult cabarets, escort agencies, sexual encounter centers, massage parlor, rap parlor, sauna and further means any premises to which the public patrons or members are invited or admitted and which are so physically arranged as to provide booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises for the purpose of viewing adult-oriented motion pictures, or wherein an entertainer provides adult entertainment to a member of the public, a patron or a member, when such adult entertainment is held, conducted, operated or maintained for a profit, direct or indirect. An adult-oriented establishment further includes, without being limited to, any adult entertainment studio or any premises that is physically arranged and used as such, whether advertised or represented as an adult entertainment studio, rap studio, exotic dance

studio, encounter studio, sensitivity studio, model studio, escort service, escort or any other term of like import;

(7) "Board" means the adult-oriented establishment board, or, if there is in existence in the county a massage registration board appointed by the county executive, such board may be substituted for the board;

(8) "County," as used in this part, means either class A counties or class B counties as classified in §57-5-103(9)(b). When county legislative body or county executive is used in this part, it means metropolitan council or metropolitan mayor when applicable to class B counties.

(9) "Employee" means a person who performs any service on the premises of an adult-oriented establishment on a full-time, part-time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not such person is paid a salary, wage, or other compensation by the operator of such business.

Employee does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

(10) "Entertainer" means any person who provides entertainment within an adult-oriented establishment as defined in this section, whether or not a fee is charged or accepted for entertainment and whether or not entertainment is provided as an employee, escort or an independent contractor;

(11) "Escort" means a person who, for monetary consideration in the form of a fee, commission, salary or tip, dates, socializes, visits, consorts with, accompanies, or offers to date, socialize, visit , consort or accompany to social affairs, entertainment or places of amusement or within any place of public resort or within any private quarters of a place of public resort;

(A) A "service-oriented escort" is an escort which:

(I) Operates from an open office;

(ii) Does not employ or use an escort runner; and

(iii) Does not advertise that sexual conduct will be provided to the patron or work for an escort bureau which so advertises; and

(iv) Does not offer or provide sexual conduct.

(B) A "sexually-oriented escort" is an escort which:

(i) Employs as an employee, agent, or independent contractor an escort bureau runner;

or

(ii) Works for, as an agent, employee, contractor, or is referred to a patron by a sexually-oriented escort bureau; or

(iii) Advertises, that sexual conduct will be provided, or works for, as an employee, agent or independent contractor or is referred to a patron by an escort bureau which so advertises; or

(iv) Solicits, offers to provide or does provide acts of sexual conduct to an escort patron, or accepts an offer or solicitation to provide acts of sexual conduct for a fee in addition to the fee charged by the escort bureau; or

(v) Works as an escort without having a current valid permit issued under this part, in his or her possession at all times while working as an escort; or

(vi) Accepts a fee from a patron who has not first been delivered a contract.

(12) "Escort service" means a person as defined herein, who, for a fee, commission, profit, payment or other monetary consideration, furnishes or offers to furnish escorts or provides or offers to introduce patrons to escorts.

(A) A "service-oriented escort bureau" is an escort bureau which:

(i) Maintains an open office at an established place of business; and

(ii) Employs or provides only escorts which possess valid permits issued under this part;

and

(iii) Does not use an escort bureau runner; and

(iv) Does not advertise that sexual conduct will be provided to a patron.

(B) A "sexually-oriented escort bureau" is an escort bureau which:

- (I) Does not maintain an open office; or
- (ii) Employs as an employee, agent, or independent contractor, uses an escort bureau runner; or
- (iii) Advertises, that sexual conduct will be provided, or that escorts which provide such sexual conduct will be provided, referred, or introduced to a patron; or
- (iv) Solicits, offers to provide or does provide acts of sexual conduct to an escort patron; or
- (v) Employs, contracts with or provides or refers escorts who do not possess valid permits issued under this part; or
- (vi) Does not deliver contracts to every patron or customer; or
- (vii) Employs, contracts with a sexually-oriented escort or refers or provides to a patron, a sexually-oriented escort.

(13) "Open office" means an office at the escort service from which the escort business is transacted and which is open to patrons or prospective patrons during all hours during which escorts are working, which is managed or operated by an employee, officer, director or owner of the escort service having authority to bind the service to escort and patron contracts and adjust patron and consumer complaints;

(14) "Operator" means any person, partnership, or corporation operating, conducting or maintaining an adult-oriented establishment;

(15) "Person" means an individual, partnership, limited partnership, firm, corporation or association;

(16) "Specified anatomical areas" means:

(A) Less than completely and opaquely covered:

(i) Human genitals;

(ii) Pubic region;

(iii) Buttocks; and

(iv) Female breasts below a point immediately above the top of the areola; and
(B) Human male genitals in a discernibly turgid state, even if completely opaquely covered; and

(17) "Specified sexual activities" means:

(A) Human genitals in a state of sexual stimulation or arousal;
(B) Acts of human masturbation, sexual intercourse or sodomy; or
(C) Fondling or erotic touching of human genitals, pubic region, buttocks or female breasts.

(18) "Specified criminal acts" means sexual crimes against children, sexual abuse, rape, indecent exposure, distribution of obscenity, distribution of obscenity or harmful material to minors, prostitution, pandering, or tax violations.

(19) "Sexual stimulation" means to excite or arouse the prurient interest or to offer or solicit acts of "sexual conduct" as defined in this part.

(20) "Sexual gratification" means "sexual conduct" as defined in this part.

(21) "Sexual conduct" means the engaging in or the commission of an act of sexual intercourse, oral-genital contact, or the touching of the sexual organs, pubic region, buttocks or female breast of a person for the purpose of arousing or gratifying the sexual desire of another person.

(22) "Specified services" means massage services, private dances, private modeling, acting as an "escort" as defined in this part, and any other live "adult entertainment" as defined in this part.

(23) "Sexual encounter center" means a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:

(A) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

(B) Physical contact between male and female persons and/or persons of the same sex when one or more of the persons exposes to view of the persons within such establishment, at any time, the bare female breast below a point immediately above the top of the areola, human genitals, pubic region, or buttocks, even if partially covered by opaque material or completely covered by translucent material.

(24) "Massage parlor" means an establishment or place primarily in the business of providing massage or tanning services where one or more of the employees exposes to public view of the patrons within such establishment, at any time, the bare female breast below a point immediately above the top of the areola, human genitals, pubic region, or buttocks, even if partially covered by opaque material or completely covered by translucent material.

(25) "Rap parlor" means an establishment or place primarily in the business of providing nonprofessional conversation or similar service for adults.

(26) "Sauna" means an establishment or place primarily in the business of providing:

(A) A steam bath; or

(B) Massage services.

7-51-1103. (a) There is created in any county in which this part is adopted as provided in § 7-51-1120, an adult-oriented establishment board.

(b) The board shall consist of five (5) members appointed by the county executive of such counties. If there exists a massage registration board appointed by the county executive, such board may be used for the adult-oriented establishments, as determined by the county executive.

(c) If the board consists of the massage registration board, the terms of the board members shall be coextensive with the terms of the massage registration board with no member serving after the expiration of the member's term or removal from the massage registration board. If the board consists of five (5) members appointed by such county executive, the terms of the board members shall be for four (4) years.

(d) A majority of the members to which the board is entitled shall constitute a quorum.

(e) The board shall serve without compensation but the members shall receive their actual expenses for attending adult-oriented establishment board meetings.

(f) The board shall select a chair from among its members and the chair shall notify interested persons and members of board meetings.

(g) The board shall meet as often as required to carry out the provisions of this part.

7-51-1104. (a) Except as provided in subsection (e), from and after the effective date of this part no adult-oriented establishment shall be operated or maintained in any applicable county without first obtaining a license to operate issued by the county adult-oriented establishment board.

(b) A license may be issued only for one (1) adult-oriented establishment located at a fixed and certain place. Any person, partnership or corporation which desires to operate more than one (1) adult-oriented establishment must have a license for each. No building, premises, structure or other facility that contains any adult-oriented establishment shall contain any other kind of adult-oriented establishment.

(c) No license or interest in a license may be transferred to any person, partnership or corporation.

(d) It is unlawful for any entertainer, employee, escort or operator to knowingly work in or about or to knowingly perform any service directly related to or at the request of the operation of any unlicensed adult-oriented establishment or escort service.

(e) All existing adult-oriented establishments at the time of the passage of this part must submit an application for a license within one hundred twenty (120) days of the effective date of this part. If a license is not issued within such one hundred twenty-day period, then such existing adult-oriented establishment shall cease to operate.

(f) No license shall be issued by the board unless the applicant certifies, by proof satisfactory to the board, that the applicant has satisfied the rules, regulations and provisions of

the applicable zoning requirements in the county. Any zoning requirement shall be in addition to and not an alternative to any requirement of this legislation.

7-51-1105. (a) Any person, partnership, or corporation desiring to secure a license shall make application to the adult-oriented establishment board. A copy of the application shall be distributed promptly to the county sheriff's department.

(b) The application for a license shall be upon a form provided by the board. An applicant for a license shall furnish the following information under oath:

- (1) Name and address, including all aliases;
- (2) Written proof that the individual is at least eighteen (18) years of age;
- (3) The applicant's height, weight, color of eyes and hair;
- (4) The business, occupation or employment of the applicant for five (5) years immediately preceding the date of the application;
- (5) The adult-oriented establishment or similar business license history of the applicant; whether such applicant, in previously operating in this or any other county, city or state under license, has had such license revoked or suspended, the reason therefor, and the business activity or occupation subject to such action of suspension or revocation;
- (6) All criminal statutes, whether federal or state, or city ordinance violations, for which conviction, forfeiture of bond or pleadings of nolo contendere have occurred, except minor traffic violations;
- (7) The address of the adult-oriented establishment to be operated by the applicant;
- (8) If the premises are leased or being purchased under contract, a copy of such lease or contract shall accompany the application;
- (9) If the applicant is a corporation, the application shall specify the name, address, and telephone number of the corporation, the date and the state of incorporation, the name and address of the registered agent for service of process of the corporation, and the names and addresses of the officers and directors of the corporation, and the names and addresses of any

persons holding fifty percent (50%) or more of the stock of the corporation; if the applicant is a partnership, the application shall specify the name and address of the partnership, the name and address of all general partners of the partnership; if the partnership is a limited partnership, the application shall specify the name and address of all general partners who have a controlling interest in the partnership.

(10) A statement by the applicant that the applicant is familiar with the provisions of this legislation and is in compliance with them.

(c) Within ten (10) days, of receiving the results of the investigation conducted by the board and/or the sheriff 's department, the board shall notify the applicant that the application is granted, denied or held for further investigation. Such additional investigation shall not exceed an additional thirty (30) days unless otherwise agreed to by the applicant. Upon the conclusion of such additional investigation, the board shall advise the applicant in writing whether the application is granted or denied.

(d) Failure or refusal of the applicant to give any information relevant to the investigation of the application of the applicant's refusal or failure to appear at any reasonable time and place for examination under oath regarding the application of the applicant's refusal to submit to or cooperate with any investigation required by this part constitutes an admission by the applicant that the applicant is ineligible for such license and shall be grounds for denial thereof by the board.

7-51-1106. To receive a license to operate an adult-oriented establishment, an applicant must meet the following standards:

(1) If the applicant is an individual:

(A) The applicant shall be at least eighteen (18) years of age;

(B) The applicant shall not have had his or her license revoked within five (5) years immediately preceding the date of the application;

(C) The applicant shall not have been convicted of or pleaded nolo contendere to any violation of this part within five (5) years immediately preceding the date of the application; and

(D) The applicant shall not have been convicted of a “specified criminal act”, as defined in §7-51-1102, for which:

(i) less than two (2) years have elapsed since the date of conviction if the conviction is for a misdemeanor offense;

(ii) less than five (5) years have elapsed since the date of conviction if the conviction is for a felony offense;

(iii) less than five (5) years have elapsed since the date of conviction for two (2) or more misdemeanor offenses occurring within any twelve (12) month period;

(iv) the fact that a conviction is being appealed shall have no effect on disqualification of the applicant;

(2) If the applicant is a corporation:

(A) All officers, directors and stockholders required to be named under § 7-51-1105(b) shall be at least eighteen (18) years of age;

(B) All officers, directors and stockholders required to be named under §7-51-1105(b) shall not have had his or her license revoked within five (5) years immediately preceding the date of the application;

(C) No officer, director or stockholder required to be named under § 7-51-1105(b) shall have been convicted of or pleaded nolo contendere to a felony or any violation of this part within five (5) years immediately preceding the date of the application;

(D) The applicant shall not have been convicted of a “specified criminal act”, as defined in § 7-51-1102, for which:

(i) less than two (2) years have elapsed since the date of conviction if the conviction is for a misdemeanor offense;

(ii) less than five (5) years have elapsed since the date of conviction if the conviction is for a felony offense;

(iii) less than five (5) years have elapsed since the date of conviction for two (2) or more misdemeanor offenses occurring within any twelve (12) month period;

(iv) the fact that a conviction is being appealed shall have no effect on disqualification of the applicant;

(3) If the applicant is a partnership, joint venture or any other type of organization where two (2) or more persons have a financial interest:

(A) All persons having a financial interest in the partnership, joint venture or other type of organization shall be at least eighteen (18) years of age;

(B) All persons having a financial interest in the partnership, joint venture or other type of organization shall not have had his or her license revoked within five (5) years immediately preceding the date of the application;

(C) No persons having a financial interest in the partnership, joint venture or other type of organization shall have been convicted of or pleaded nolo contendere to any violation of this part within five (5) years immediately preceding the date of the application; and

(D) The applicant shall not have been convicted of a "specified criminal act", as defined in § 7-51-1102, for which:

(i) less than two (2) years have elapsed since the date of conviction if the conviction is for a misdemeanor offense;

(ii) less than five (5) years have elapsed since the date of conviction if the conviction is for a felony offense;

(iii) less than five (5) years have elapsed since the date of conviction for two (2) or more misdemeanor offenses occurring within any twelve (12) month period;

(iv) the fact that a conviction is being appealed shall have no effect on disqualification of the applicant;

(4) No license shall be issued unless the board or sheriff's department has investigated the applicant's qualifications to be licensed. The results of that investigation shall be filed in writing with the board no later than twenty (20) days after the date of the application.

(5) An applicant who has been convicted of any "specified criminal activities" may not be denied a permit based on those convictions once the time period required in §7-51-1106 has elapsed.

7-51-1107. (a) In order to effectuate the provisions of this part, the board, its authorized representative or sheriff is empowered to conduct investigations of persons engaged in the operation of any adult-oriented establishment and inspect the license of the operators and establishment for compliance. Refusal of an operation or establishment to permit inspections shall be grounds for revocation, suspension or refusal to issue licenses provided by this part.

(b) Within ten (10) days, of receiving the results of the investigation, the board shall notify the applicant that the application is granted, denied or held for further investigation. Such additional investigation shall not exceed an additional thirty (30) days, unless otherwise agreed to by the applicant. Upon the conclusion of such additional investigation, the board shall advise the applicant in writing whether the application is granted or denied.

(c) If an additional investigation is held, upon the expiration of the thirtieth (30) day, the applicant shall be permitted to begin operating the business for which the license is sought, unless or until, the board or its authorized representative notifies the applicant of a denial of the application and states the reason(s) for that denial.

7-51-1108. (a) The board has the power and authority to enter into any court of the state of Tennessee having proper jurisdiction to seek an injunction against any person or adult-oriented establishment not in compliance with the provisions of this part, and is further empowered to enter into any such court to enforce the provisions of this part in order to ensure compliance with such provisions.

(b) Any violation of an injunction obtained under this section is contempt with a fine of fifty dollars (\$50.00).

(c) Each day in contempt of such injunction is considered a separate offense.

(d) The circuit, chancery, or criminal courts of this state and the chancellors and judges thereof shall have full power, authority, and jurisdiction, upon application by sworn detailed petition filed by the board within their respective jurisdictions, to issue any and all proper restraining orders, temporary and permanent injunctions, and any other writs and processes appropriate to carry out and enforce this part.

7-51-1109. (a) The board shall revoke, suspend or annul a license for any of the following reasons:

(1) Discovery that false or misleading information or data was given on any application or material facts were omitted from any application;

(2) The operator or entertainer, or any employee of the operator, violates any provision of this part or any rule or regulation adopted by the board pursuant to this part; provided, that in the case of a first offense by an operator where the conduct was solely that of an employee, the penalty shall not exceed a license suspension of thirty (30) days if the board shall find that the operator had no actual or constructive knowledge of such violation and could not, by the exercise of due diligence, have had such actual or constructive knowledge;

(3) The operator becomes ineligible to obtain a license;

(4) Any cost or fee required to be paid by this part is not paid; or

(5) Any intoxicating liquor or malt beverage is served or consumed on the premises of the adult-oriented establishment;

(6) An operator employs an employee who does not have a permit or provides space on the premises, whether by lease or otherwise, to an independent contractor who performs or works as an entertainer without a permit;

(7) Any operator, employee or entertainer sells, furnishes, gives or displays, or causes to be sold, furnished, given or displayed to any minor any adult-oriented entertainment or adult-oriented material;

(8) Any operator, employee or entertainer denies access of law enforcement personnel to any portion of the licensed premises wherein adult-oriented entertainment is permitted or to any portion of the licensed premises wherein adult-oriented material is displayed or sold;

(9) Any operator fails to maintain the licensed premises in a clean, sanitary and safe condition;

(10) Any operator, employee or entertainer is convicted of a "specified criminal act", as defined in §7-51-1102, provided that such violation occurred on the licensed premises.

(b) Notwithstanding anything herein to the contrary, before revoking or suspending any license or permit, the chair shall give the license holder or permit holder not less than ten (10) nor more than twenty (20) days' written notice of the charges against such license holder or permit holder and of the revocation of such license or permit, or of the period of time such license or permit is to be suspended; such notice shall also advise the license holder or permit holder of the license holder's or permit holder's right to request a hearing before the board. In the event the license holder or permit holder does not request in writing a hearing before the board within the time set forth in such notice, the suspension or revocation shall be effective beginning the date set forth in such notice.

If the license holder or permit holder desires to request a hearing before the board to contest the suspension or revocation, such request shall be made in writing to the county executive of such county within ten (10) days of the license holder's or permit holder's receipt of the notification from the board. If the license holder or permit holder timely requests such a hearing, the effective date of a suspension or hearing shall be stayed pending the final outcome of judicial proceedings to determine whether such license or permit has been properly revoked or suspended under the law.

If the license holder or permit holder timely requests such a hearing, a public hearing shall be held within fifteen (15) days of the county executives' receipt of such request before the board at which time the license holder or permit holder may present evidence contrary to the provisions of this part. The board shall hear evidence concerning the basis for such suspension or revocation and shall affirm or reverse the suspension or revocation at the conclusion of such hearing; any such hearing shall be concluded no later than twenty-two (22) days after the license holder's or permit holder's receipt of the notification of the suspension or revocation, unless an extension beyond such time period is requested by the license holder or permit holder and granted by the board.

(c) If the board affirms the suspension or revocation, the county attorney for such county shall institute suit for declaratory judgment in a court of record in such county, within five (5) days of the date of any such affirmation seeking an immediate judicial determination of whether such license or permit has been properly revoked or suspended under the law.

(d) Any operator whose license is revoked shall not be eligible to receive a license for five (5) years from the date of revocation. No location or premises for which a license had been issued shall be used as an adult-oriented establishment for one (1) year from the date of revocation of the license.

(e) The applicant shall be entitled to judicial determination of the issues within two (2) days after joinder of issue, and a decision shall be rendered by the court within two (2) days of the conclusion of the hearing.

7-51-1110 (a) As used in this section, "application" means"

- (1) An application for a license;
- (2) An application for a permit;
- (3) An application for a license renewal; and
- (4) An application for a permit renewal.

(b) Whenever an application is denied, the chairman shall notify the applicant in writing of the reasons for such action; such notice shall also advise the applicant of the applicant's right to request a hearing before the board. If the applicant desires to request a hearing before the board to contest the denial of an application, such request shall be made in writing to the county executive of such county within ten (20) days of the applicant's receipt of the notification of the denial of the application. If the applicant timely requests such a hearing, a public hearing shall be held within fifteen (15) days of the county executive's receipt of such request before the board at which time the applicant may present evidence as to why the application should not be denied. The board shall hear evidence concerning the basis for denial of the application and shall affirm or reverse the denial of an application at the conclusion of such hearing; any such hearing shall be concluded no later than twenty-two (22) days after the applicant's receipt of notification of denial of an application, unless an extension beyond such time period is requested by the applicant and granted by the board.

(c) If the board affirms the denial of an application, the office of the county attorney for such county shall institute suit for declaratory judgment in a court of record in such county, within five (5) days of the date of any such denial seeking an immediate judicial determination of whether such application has been properly denied under the law.

(d) The applicant shall be entitled to judicial determination of the issues within two (2) days after joinder of issue, and a decision shall be rendered by the court within two (2) days of the conclusion of the hearing.

7-51-1111. (a) Every license issued under this part will terminate at the expiration of one (1) year from the date of issuance, unless sooner revoked, and must be renewed before operation is allowed in the following year. Any operator desiring to renew a license shall make application to the board. The application for renewal must be filed not later than sixty (60) days before the license expires. The application for renewal shall be filed in triplicate with and dated by the board. A copy of the application for renewal shall be distributed promptly by the chair of

the board to the applicable county sheriff. The application for renewal shall contain such information and data, given under oath or affirmation, as may be required by the board, but not less than the information contained in the original application.

(b) A license renewal fee of one hundred dollars (\$100) shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty of fifty dollars (\$50) shall be assessed against the applicant who files for a renewal less than thirty (30) days before the license expires. If the application is denied, one half (1/2) of the fee shall be returned.

(c) If the sheriff 's department is aware of any information bearing on the operator's qualifications, the information shall be filed in writing with the board not later than ten (10) days after the date of the application for renewal.

(d) Every permit issued under this part will terminate at the expiration of one (1) year from the date of issuance, unless sooner revoked and must be renewed before an entertainer is allowed to provide entertainment in an adult-oriented establishment in the following calendar year. Any entertainer desiring to renew a permit shall make application to the board. The application for renewal must be filed not later than thirty (30) days before the permit expires. The application for renewal shall be filed in triplicate with and dated by the board. A copy of the application for renewal shall be distributed promptly by the board to the sheriff. The application for renewal shall be upon a form provided by the board and shall contain such information and data, given under oath or affirmation, as may be required by the board.

(e) A permit renewal fee of fifteen dollars (\$15) shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty of five dollars (\$5.00) shall be assessed against the applicant who files for renewal less than thirty (30) days before the license expires. If the application is denied, one-half (1/2) of the fee shall be returned.

(f) If the sheriff's department is aware of any information bearing on the entertainer's qualifications, that information shall be filed in writing with the board not later than ten (10) days after the date of the application for renewal.

(g) Notwithstanding anything herein to the contrary, any application for renewal of a license or for renewal for a permit shall be handled, investigated, and approved or denied within the same time periods as those established in this part for original license applications and permit applications. In the event a license renewal application or permit renewal application is denied, the applicant shall have all rights of appeal to the adult board as set forth in §7-51-1110 of this part.

7-51-1112. (a) No adult-oriented establishment shall be open between the hours of one o'clock a.m. (1:00 a.m.) and eight o'clock a.m. (8:00 a.m.).

(b) All adult-oriented establishments shall be open to inspection at all reasonable times by the applicable sheriff's department or such other persons as the board may designate.

7-51-1113. (a) The operator shall maintain a register of all employees, showing the name, the aliases used by the employee, home address, age, birth date, sex, height, weight, color of hair and eyes, telephone number, social security number, driver license number, date of employment and termination, and duties of each employee, and such other information as may be required by the board. The above information on each employee shall be maintained in the register on the premises for a period of three (3) years following termination.

(b) The operator shall make the register of employees available immediately for inspection by the board and/or sheriff 's department upon demand of a member of the board or sheriff 's department at all reasonable times.

(c) Every act or omission by an employee constituting a violation of the provisions of this part shall be deemed the act or omission of the operator if such act or omission occurs either with the authorization, knowledge, or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission.

(d) An operator shall be responsible for the conduct of all employees while on the licensed premises and any act or omission of any employee constituting a violation of the provisions of this part shall be deemed the act or omission of the operator for purposes of determining whether the operator's license shall be revoked, suspended or renewed.

(e) There shall be posted and conspicuously displayed in the common areas of each adult-oriented establishment a list of any and all entertainment provided on the premises. Viewing adult-oriented motion pictures shall be considered as entertainment. The operator shall make the list available immediately upon demand of the board or sheriff 's department at all reasonable times.

(f) No employee of an adult-oriented establishment shall allow any minor to loiter around or to frequent an adult-oriented establishment or to allow any minor to view adult entertainment as herein defined.

(g) Every adult-oriented establishment shall be physically arranged in such a manner that the entire interior portion of the booths, cubicles, rooms or stalls, wherein adult entertainment is provided, shall be visible from the common area of the premises. Visibility shall not be blocked or obscured by doors, curtains, partitions, drapes or any other obstruction whatsoever. It is unlawful to install booths, cubicles, rooms or stalls within adult-oriented establishments for whatever purpose, but especially for the purpose of secluded viewing of adult-oriented motion pictures or other types of adult entertainment.

(h) The operator shall be responsible for and shall provide that any room or area used for the purpose of viewing adult-oriented motion pictures or other types of live adult entertainment shall be readily accessible at all times and shall be continuously opened to view in its entirety.

(i) No operator, entertainer or employee of an adult-oriented establishment shall demand or collect all or any portion of a fee for entertainment before its completion.

(j) The license shall be conspicuously displayed in the common area of the premises at all times.

(k) A sign shall be conspicuously displayed in the common area of the premises, and shall read as follows:

This Adult-Oriented Establishment is Regulated by Tennessee Code Annotated, Title 7, Chapter 51, Sections 1101 through 1120. Entertainers are:

1. Not permitted to engage in any type of sexual conduct;
2. Not permitted to expose their sex organs;
3. Not permitted to demand or collect all or any portion of a fee for entertainment before its completion;
4. Not permitted to appear in a state of full nudity.

(l) The permit shall be carried by an employee, entertainer, or escort upon his or her person and shall be displayed upon request of a customer, any member of such county sheriff's department, any board member, or any person designated by the board.

(m) Adult-oriented establishments that provide specified services for customers or patrons shall:

- (1) Provide patrons with written contracts and receipts that show:
 - (A) Specified service provided;
 - (B) Cost of specified service;
 - (C) Date and time of service provided;
 - (D) Signature of customer or patron and signature or initials of permit holder providing the specified service; and
 - (E) Method of payment for service.
- (2) Keep copies on file of all published advertisements.

7-51-1114. (a) No operator, entertainer or employee of an adult-oriented establishment shall permit to be performed, offer to perform, perform or allow, patrons to perform sexual

intercourse or oral or anal copulation or other contact stimulation of the genitalia.

(b) No operator, entertainer or employee of an adult-oriented establishment shall encourage or permit any person upon the premises to touch, caress or fondle the breasts, buttocks, anus or genitals of any other person.

(c) No entertainer, employee, or customer shall be permitted to have any physical contact with any other on the premises during any performance and all performances shall only occur upon a stage at least eighteen inches (18") above the immediate floor level and removed at least six feet (6') from the nearest entertainer, employee, and/or customer.

(d) No employee or entertainer while on the premises of the adult-oriented establishment may mingle with any customer or spectator for any purpose.

(e)(1) No employee or entertainer, while on the premises of an adult-oriented establishment, may:

(A) Engage in sexual intercourse;

(B) Engage in deviant sexual conduct;

(C) Appear in a state of nudity;

(D) Fondle the genital of himself, herself or another person.

(2) For the purpose of this section, "Nudity" means the showing of the human male or female genitals or pubic area with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.

(f) If the license holder operates an escort bureau, such bureau shall not be operated as a "sexually-oriented escort bureau" as defined in this part.

(g) No permit holder of an escort bureau shall conduct oneself as a "sexually-oriented escort" as defined in this part.

(h) No license holder shall advertise that such license holder offers "sexual stimulation" or "sexual gratification" as defined in this part.

(i) (1) It is unlawful for any owner, operator, entertainer, or employee, while on the premises of the licensed adult-oriented establishment, to distribute, for commercial purposes, sell or offer for sale any device, instrument or paraphernalia designed or marketed primarily for stimulation of human genital organs or for sado-masochistic use or abuse of themselves or others.

(2) Such devices, instruments or paraphernalia include but are not limited to: phallic shaped vibrators, dildos, muzzles, whips, chains, bather restraints, racks, non-medical enema kits, body piercing implements (excluding earrings or other decorative jewelry) or other tools of sado-masochistic abuse.

7-51-1115. No person shall be an entertainer, employee, or escort in an adult-oriented establishment without a valid permit issued by the board.

7-51-1116 (a) Any person desiring to secure a permit shall make application to the board. The application shall be filed in triplicate with and dated by the board. A copy of the application shall be distributed promptly by the board to the sheriff 's department.

(b) The application for a permit shall be upon a form provided by the board. An applicant for a permit shall furnish the following information under oath:

(1) Name and address, including all aliases;

(2) Written proof that the individual is at least eighteen (18) years of age;

(3) The applicant's height, weight, color of eyes and hair;

(4) The adult-oriented establishment or similar business permit history of the applicant; whether such person, in previously operating in this or any other city or state under permit, has had such permit revoked or suspended, the reason therefor, and the business activity or occupation subject to such action of suspension or revocation;

(5) All criminal statutes, whether federal or state, or city ordinance violation for which a conviction, forfeiture of bond and pleadings of nolo contendere have occurred, except minor traffic violations;

(6) Two (2) portrait photographs at least two inches (2") by two inches (2") of the applicant; and

(7) A statement by the applicant that the applicant is familiar with the provisions of this part and is in compliance with them.

(c) Within ten (10) days of receiving the results of the investigation conducted by the board or sheriff's department, the board shall notify the applicant that the applicant's application is granted, denied or held for further investigation. Such additional investigation shall not exceed an additional thirty (30) days unless otherwise agreed to by the applicant. Upon the conclusion of such additional investigations, the board shall advise the applicant in writing whether the application is granted or denied.

(d) If an additional investigation is held, upon the expiration of the thirtieth (30) day, the applicant shall be permitted to begin operating the business for which the license is sought, unless or until, the board or its authorized representative notifies the applicant of a denial of the application and states the reason(s) for that denial.

(e) Failure or refusal of the applicant to give any information relevant to the investigation of the application or the applicant's refusal or failure to appear at any reasonable time and place for examination under oath regarding the application or the applicant's refusal to submit to or cooperate with any investigation required by this part constitutes an admission by the applicant that the applicant is ineligible for such permit and is grounds for denial thereof by the board.

7-51-1117 (a) To receive a permit as an entertainer or escort, an applicant must meet the following standards:

(1) The applicant shall be at least eighteen (18) years of age;

(2) The applicant shall not have had his or her permit revoked within two (2) years immediately preceding the date of the application;

(3) The applicant shall not have been convicted of a "specified criminal act", as defined in §7-51-1102, for which:

(A) less than two (2) years have elapsed since the date of conviction if the conviction is for a misdemeanor offense;

(B) less than five (5) years have elapsed since the date of conviction if the conviction is for a felony offense;

(C) less than five (5) years have elapsed since the date of conviction for two (2) or more misdemeanor offenses occurring within any twelve (12) month period;

(D) the fact that a conviction is being appealed shall have no effect on disqualification of the applicant;

(4) An applicant who has been convicted of any specified criminal activities may not be denied a permit based on those convictions once the time period required in §7-51-1117(a)(3) has elapsed.

(b) No permit shall be issued until the board or sheriff 's department has investigated the applicant's qualifications to receive a permit. The results of that investigation shall be filed in writing with the board no later than thirty (30) days after the date of the application.

7-51-1118. (a) A license fee of one hundred dollars (\$100) shall be submitted with the application for a license. If the application is denied, one half (1/2) of the fee shall be returned.

(b) A permit fee of fifteen dollars (\$15) shall be submitted with the application for a permit. If the application is denied, one half (1/2) of the fee shall be returned.

7-51-1119 (a) Any person, partnership or corporation who is found to have violated this part shall be fined a definite sum not exceeding fifty dollars (\$50.00) and shall result in the suspension or revocation of any license.

(b) Each violation of this part shall be considered a separate offense, and any violation continuing more than one (1) hour of time shall be considered a separate offense for each hour of violation.

7-51-1120. This part shall be local in effect and shall become effective in a particular county upon the contingency of a two-thirds (2/3) vote of the county legislative body adopting this part.

7-51-1121 Nothing in this act shall pre-empt or prevent political subdivisions in this state from enacting and enforcing other lawful and reasonable restrictions, regulations, licensing, zoning, and other criminal, civil or administrative provisions concerning the location, configuration, code compliance, or other business operations or requirements of adult-oriented establishments and sexually-oriented businesses.

7-51-1122 Should any court of competent jurisdiction declare any section, clause, or provision of this article to be unconstitutional, such decision shall affect only such section, clause, or provision so declared unconstitutional, and shall not affect any other section, clause, or provision of this part.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.